

From: Ari Savitzky <asavitzky@aclu.org>
Sent: Thursday, November 2, 2023 2:35 PM
To: Ryan Beckett; Joshua Tom
Cc: Tommie Cardin; Parker Berry; Rex Shannon; Cindy Grantham; 'Mike Wallace'; Charles Cowan; Jeremy Esterkin; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd; Ming Cheung; Robert B. McDuff; Carroll Rhodes; John Lavelle; Jordan, Drew Cleary; Benjamin.Bhamdeo; Celina Antonellis; 'Mike Wallace'; Charles Cowan
Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Thanks, Ryan. I appreciate your response. Two follow ups.

First, I would note that, inasmuch as you are seeking the disclosure of internal communications between/among/involving particular members of the State Conference and containing their particular identifying information, you are in effect seeking information about the identity of State Conference members. That is not the only basis for our assertion of an associational privilege, but I point it out in light of your statement that you are not seeking such information.

Second, while we understand that you are not challenging our privilege assertions with respect to documents withheld pursuant to the attorney-client and work-product privileges, are you challenging our assertion of privilege as all of other documents on our logs? And if not, can you provide a list of which documents from our logs you are challenging? That would be helpful to understand whether any further discussion is warranted.

Thanks,

Ari

Ari Savitzky

Senior Staff Attorney, Voting Rights Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

212.549.2681 | 401.529.3982 (cell) | asavitzky@aclu.org

Pronouns: *he, him, his*

aclu.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>
Sent: Wednesday, November 1, 2023 3:57 PM
To: Ari Savitzky <asavitzky@aclu.org>; Joshua Tom <JTom@aclu-ms.org>
Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace'



<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; Jeremy Esterkin <Jeremy.Esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; John Lavelle <John.Lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Celina Antonellis <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Ari,

We intend to bring a motion to compel disclosure and production of the following categories of communications and documents related to the 2022 Mississippi legislative redistricting: (1) communications and documents shared by the NAACP with its members, (2) communications and documents shared by and between members, and (3) communications and documents between the NAACP and other organizations. We are not seeking communications or documents not related to the 2022 Mississippi legislative redistricting.

We have not and are not seeking membership lists, membership information, donor lists, donor information and related materials. We did not ask for that in our discovery and do not seek such information. We do not have any reason to challenge the invocation of the attorney-client or work product privileges. We take counsel at your word about the application of the attorney-client privilege to the materials that have been identified.

Please let me know if you think that there is more to discuss on this issue. If so, I'm happy to find a time to do so. If not, I will send the Court a note about this issue and determine whether Judge Ball wants to have a pre-motion conference or whether we can proceed with filing the motion. Best regards,

P. Ryan Beckett

Butler Snow LLP

D: (601) 985-4557 | F: (601) 985-4500
1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157
P.O. Box 6010, Ridgeland, MS 39158-6010
Ryan.Beckett@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Ari Savitzky <asavitzky@aclu.org>

Sent: Wednesday, October 25, 2023 4:37 PM

To: Joshua Tom <JTom@aclu-ms.org>; Ryan Beckett <Ryan.Beckett@butlersnow.com>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace'

<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.'

<jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org;

David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff

<rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P.

<john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin

<Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace'

<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Ryan:

Nice talking to you yesterday. To summarize my understanding of your question, you are not challenging any assertions of attorney-client privilege and are not seeking any personal identifying information or membership information, but do not necessarily agree that the associational privilege protects (a) communications between/among MS NAACP members and (b) communications between MS NAACP members and other organizations and their members when the organizations are associating with one another on advocacy or other strategic projects relating to the organizations' missions.

Our position is that both (a) and (b) are protected, and that disclosure of such communications would chill First Amendment-protected associational, expressive, and speech activities in myriad ways, including discouraging citizens from becoming members and from engaging in protecting advocacy and mission-oriented work, discouraging members of an association from communicating with one another, and discouraging organizations from associating with one another and engaging in strategic work to express their views on areas of common concern.

With regard to internal communications between/among MS NAACP members, staff, and contractors, we think the authority strongly supports their protection. Courts have recognized that the compelled disclosure of an organization's internal communications can have a chilling effect on participation in protected activities and on the free flow of information within the organization. *E.g., Perry v. Schwarzenegger*, 591 F.3d 1147, 1162 (9th Cir. 2010); *accord Whole Woman's Health v. Smith*, 896 F.3d 362 (5th Cir. 2018) (holding that Catholic organization did not need to disclose internal communications regarding its support of a bill requiring burial of fetal tissue in Texas and concluding that such internal communications "must be permitted to be broad, uninhibited, and fearless, and that protecting such deliberations is a seminal aspect of the freedom to associate"); *The Ohio Org. Collaborative v. Husted*, No. 2:15-CV-01802, 2015 WL 7008530, at *3-4 (S.D. Ohio Nov. 12, 2015) (associational privilege protects from disclosure of any information the disclosure of which would "inhibit[] [the organization's] ability to organize, promote their message(s), and conduct their affairs.").

With regard to communications between organizations who are associating with one another on specific issues/projects, courts have also held that those communications may be protected because disclosure of such communications would chill protected associational activity. *See Puente Arizona v. Arpaio*, 314 F.R.D. 664, 672-73 (D. Ariz. 2016) (Finding an email to a network of members, activists, and legislators to be protected by associational privilege where disclosure of the communication would "undoubtedly induce members and organizations to withdraw their participation" in collaborative strategy sessions); *See Apple Inc. v. Match Grp., Inc.*, 2021 WL 3727067, at *8 (N.D. Cal. Aug. 19, 2021) ("Who in their right mind would want to participate in a public advocacy organization, knowing that all their internal communications about strategy, lobbying, planning, and so on, would be turned over to their principal opponent? Once people realize that the Coalition's documents and internal communications have been turned over to Apple, no one will want to join or remain in the Coalition").

As noted, we feel strongly about these issues, but I do hope we can avoid any motion practice or at least narrow down the dispute here. Let us know what you think. Two additional points.

First, and as I mentioned on the call, if we were to litigate this issue, I think that the applicable balancing test would weigh heavily against disclosure, given (among other things) that the internal communications of MS NAACP and its members are not relevant to the claims asserted in this case, that defendants have no particular need for such information to defend the case, and that plaintiffs have not put any of the communications in issue over the course of the litigation. *E.g., Husted*, WL 7008530, at *3-4 (S.D. Ohio Nov. 12, 2015) (no disclosure where "defendants have not established that the information sought by the challenged requests is highly relevant to either the issue of standing or the merits of plaintiffs' claims"); *see also generally, e.g., Grandbouche v. Clancy*, 825 F.2d 1463, 1466-67 (10th Cir.1987) (setting forth applicable balancing test).

Second, and also as noted, I am going to go back and see whether any of the log entries involving communications with strategic partners should be amended. At least one of the entries you had noted which mentions "strategic partners" is in fact purely internal to NAACP members and contractors.

I am happy to chat again at your convenience. Thanks,

Ari

Ari Savitzky

Senior Staff Attorney, Voting Rights Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

212.549.2681 | 401.529.3982 (cell) | asavitzky@aclu.org

Pronouns: he, him, his

aclu.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Joshua Tom <JTom@aclu-ms.org>

Sent: Monday, October 23, 2023 12:07 PM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; Ari Savitzky <asavitzky@aclu.org>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

That works Ryan.

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Sent: Monday, October 23, 2023 10:41 AM

To: 'Ari Savitzky' <asavitzky@aclu.org>; Joshua Tom <JTom@aclu-ms.org>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Ari and Josh,

Can we move this call to 4 pm CT tomorrow, October 24? That time was available before. I inadvertently double-booked myself for 3 pm CT today. Let me know if that works for you. Best,

P. Ryan Beckett
Butler Snow LLP

D: (601) 985-4557 | F: (601) 985-4500
1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157
P.O. Box 6010, Ridgeland, MS 39158-6010
Ryan.Beckett@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Ari Savitzky <asavitzky@aclu.org>
Sent: Thursday, October 19, 2023 4:52 PM
To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; Joshua Tom <JTom@aclu-ms.org>
Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>
Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Received. Thanks, Ryan. Talk then!

Ari Savitzky
Senior Staff Attorney, Voting Rights Project
American Civil Liberties Union
125 Broad St., New York, NY 10004
212.549.2681 | 401.529.3982 (cell) | asavitzky@aclu.org
Pronouns: he, him, his

aclu.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>
Sent: Thursday, October 19, 2023 5:47 PM
To: Ari Savitzky <asavitzky@aclu.org>; Joshua Tom <JTom@aclu-ms.org>
Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P.

<john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Ari,

Let's talk at 3 pm CT on Monday, October 23. You can use this dial-in:

Call 866-716-6638

Pw: 601 985 4557

Thanks. Best,

P. Ryan Beckett
Butler Snow LLP

D: (601) 985-4557 | F: (601) 985-4500

1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157

P.O. Box 6010, Ridgeland, MS 39158-6010

Ryan.Beckett@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Ari Savitzky <asavitzky@aclu.org>

Sent: Thursday, October 19, 2023 3:05 PM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; Joshua Tom <JTom@aclu-ms.org>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.'

<jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org;

David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P.

<john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin

<Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Hi Ryan:

Here are good windows for us (in CST):

Monday: 10-1130, 3-5

Tuesday: 11-12, 2-3, 4-5

Let us know what you think?

Thanks,

Ari

Ari Savitzky

Senior Staff Attorney, Voting Rights Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

212.549.2681 | 401.529.3982 (cell) | asavitzky@aclu.org

Pronouns: he, him, his

aclu.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Sent: Thursday, October 19, 2023 12:51 PM

To: Ari Savitzky <asavitzky@aclu.org>; Joshua Tom <JTom@aclu-ms.org>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace'

<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.'

<jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org;

David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff

<rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P.

<john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs [IWOV-BUTLERSNOW.FID7560002]

Ari,

Thanks for the timely reply. I am in a deposition all day tomorrow so that won't work. I think our team has good availability on Monday and Tuesday. What times might work for you on Monday and Tuesday?

P. Ryan Beckett

Butler Snow LLP

D: (601) 985-4557 | F: (601) 985-4500

1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157

P.O. Box 6010, Ridgeland, MS 39158-6010

Ryan.Beckett@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Ari Savitzky <asavitzky@aclu.org>

Sent: Thursday, October 19, 2023 10:27 AM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; Joshua Tom <JTom@aclu-ms.org>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace'

<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.'

<jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org;

David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff

<rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P.

<john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin

<Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace'

<mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>

Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs

Hi Ryan:

We are happy to meet and confer to discuss this issue. How is Friday at 1 pm CST? I can propose some times Monday or Tuesday as well if that would be better.

Thanks,

Ari

Ari Savitzky

Senior Staff Attorney, Voting Rights Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

212.549.2681 | 401.529.3982 (cell) | asavitzky@aclu.org

Pronouns: he, him, his

aclu.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Sent: Tuesday, October 17, 2023 6:35 PM

To: Joshua Tom <JTom@aclu-ms.org>; Ari Savitzky <asavitzky@aclu.org>
Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>
Subject: RE: MS NAACP v. SBEC - Plaintiffs' privilege logs

Josh and Ari,

We write today to propose that we meet and confer with respect to certain matters addressed in certain of the privilege logs produced by Plaintiffs. Specifically, we don't think we have enough information to assess the assertion by some Plaintiffs of "First Amendment Privilege." For instance, Mr. Gary Fredericks asserts an associational privilege of communications between himself and "Strategic Partner(s)" explained as a "Confidential communication regarding the associational plans or strategies of Plaintiff and allied association(s) regarding redistricting." We fail to see how Mr. Fredericks' communications with (non-lawyer) "strategic partners" meets the standard for the associational privilege in the Fifth Circuit.

The First Amendment "privilege protects against a forced '[d]isclosure[] of political affiliations and activities' that would have a deterrent effect on the exercise of free speech or freedom of association rights." *La Union del Pueblo Entero v. Abbott*, No. SA-21-CV-00844, 2022 WL 17574079, at *6 (W.D. Tex. Dec. 9, 2022) (quoting *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010)); *see also In re Motor Fuel Temperature Sales Pracs. Litig.*, 641 F.3d 470, 479 (10th Cir. 2011) ("[T]he First Amendment privilege generally guarantees the right to maintain private associations when, without that privacy, there is a chance that there may be no association and, consequently, no expression of the ideas that association helps to foster.").

First Amendment privilege claims are generally evaluated under a two-part test. The party asserting the privilege must first make "a prima facie showing of arguable First Amendment infringement." *La Union del Pueblo Entero*, 2022 WL 17574079, at *6. "This prima facie showing requires the party to prove that enforcement of the discovery requests will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest

an impact on, or chilling of, the members' associational rights." *Id.* Upon a prima facie showing, the burden shifts to the requesting party to establish that the information sought "is sufficient to justify the deterrent effect on the free exercise of the constitutionally protected right of association." *Id.*

Bellard v. Univ. of Texas MD Anderson Cancer Ctr., No. 3:22-CV-00088, 2023 WL 3270902, at *2 (S.D. Tex. May 5, 2023).

Most of the cases upholding associational privilege involve inquiries into an organization's membership, donor lists or related information. We have sought no such information. But, we don't see how a plaintiff's communications with "strategic partners" will result in harassment, membership withdrawal or discouragement of new members or will have an objectively chilling impact on associational rights. The same can be said of the associational privilege asserted by the NAACP over internal communications about planned communications or internal bulletins regarding advocacy and strategy. I won't go through each of the logs' entries in this email, but rather, raise this issue to see if there is room for further discussion.

Please let us know if you would like to meet and further confer on this issue. Best regards,

P. Ryan Beckett

Butler Snow LLP

D: (601) 985-4557 | F: (601) 985-4500

1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157

P.O. Box 6010, Ridgeland, MS 39158-6010

Ryan.Beckett@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Joshua Tom <JTom@aclu-ms.org>

Sent: Tuesday, October 3, 2023 4:46 PM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; 'Mike Wallace' <mbw@wisecarter.com>; Charles Cowan <cec@wisecarter.com>; 'Esterkin, Jeremy B.' <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky <asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina <celina.antonellis@morganlewis.com>

Subject: MS NAACP v. SBEC - Plaintiffs' privilege logs

Dear Ryan:

Please find attached privilege logs from Plaintiffs The Mississippi State Conference of the NAACP, Gary Fredericks, Pam Hamner, Andrea Wesley, Joseph Wesley, and Barbara Finn.

All the best,

Josh

Joshua F. Tom

Pronouns: he/him/his

Legal Director

American Civil Liberties Union of Mississippi

101 South Congress St., Jackson, MS 39201

601.354.3408 ext. 112 | jtom@aclu-ms.org

aclums.org   



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.